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this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.**

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ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE VISITATION OF:

M.S. and K.S.,

Grandchildren,

By Next Best Friend

BEVERLY R. NEWMAN,

Appellant- Petitioner.

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No. 29A05-0606-CV-322

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APPEAL FROM THE HAMILTON SUPERIOR COURT  
The Honorable Steve David, Special Judge  
Cause No. 29D03-0501-DR-002

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**March 20, 2007**

**MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION**

**ROBB, Judge**

Appellant-Petitioner Beverly R. Newman has moved that I disqualify myself from

participation in this case. More specifically, she has filed a petition for rehearing from this court's decision in the case of *In re the Visitation of M.S. and K.S.*, No. 29A05-0606-CV-322 (Ind. Ct. App., Jan. 24, 2007), in which we affirmed the trial court's denial of Newman's request for court-ordered grandparent visitation. In part, she seeks rehearing "in order for Justice [sic] Robb to address whether recusal is appropriate . . . ." Appellant's Consolidated Pet. for Reh'g and Motion for Justice [sic] Robb to Recuse at 1.

Newman alleges that because I am the chairperson for the Indiana Family Courts Task Force and Judge Steve David, the trial court judge in this case, is a member of the Task Force, our "close working relationship" for many years on this task force "give[s] rise to an appearance of impropriety with respect to [my] participation on the panel herein . . . ." Id. at 16. Citing Canons 2<sup>1</sup> and 3(E) of the Indiana Code of Judicial Conduct and Indiana Code section 33-25-3-2,<sup>2</sup> Newman contends that recusal is mandated.

A judge must "hear and decide matters assigned to the judge except those in which disqualification is required." Ind. Judicial Conduct Canon 3(B)(1). However, judges also have a duty to promote public confidence in the impartiality and integrity of the judiciary. Jud. Canon 2(B). Accordingly, the code requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Jud. Canon 3(E). The test for disqualification under Canon 3(E) is "whether an objective person,

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<sup>1</sup> "A judge shall avoid impropriety and the appearance of impropriety in all the judge's activities."

<sup>2</sup> "If a judge of the court of appeals: (1) is related to a party; (2) is interested in a case; (3) was a counsel in a case; or (4) was the judge who rendered the decision in a lower court that has been appealed to the court of appeals; the judge shall disqualify himself or herself and not sit to hear the case."

knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality." Tippecanoe Assocs. II, LLC v. Kimco Lafayette 671, Inc., 811 N.E.2d 438, 444 (Ind. Ct. App. 2004), aff'd in relevant part, 829 N.E.2d 512 (Ind. 2005) (quoting Tyson v. State, 622 N.E.2d 457, 459 (Ind. 1993)). The question "is not whether the judge personally believes himself or herself to be impartial, but whether a reasonable person aware of all the circumstances would question the judge's impartiality." In re Wilkins, 780 N.E.2d 842, 845 (Ind. 2003) (quoting In re Morton, 770 N.E.2d 827, 831 (Ind. 2002)).

The law presumes that a judge is unbiased and unprejudiced in the matters before her. Lee v. State, 735 N.E.2d 1169, 1172 (Ind. 2000). A mere allegation of bias, without a specific factual showing in support, is insufficient to require disqualification. Hite v. Haase, 729 N.E.2d 170, 176 (Ind. Ct. App. 2000). Newman notes that her appeal "concerns an order issued by Judge David, and specifically includes an issue concerning requested recusal of Judge David which necessarily implicates his 'integrity, impartiality, and competence.'" Appellant's Consolidated Pet. for Reh'g and Motion for Justice [sic] Robb to Recuse at 15. She alleges that as chairperson of the task force, I am in a position "to direct and evaluate Judge David" and as part of her appeal, I was called upon to rule on issues concerning Judge David's integrity, impartiality, and competence. *Id.* at 16. She concludes that these circumstances give rise to an appearance of impropriety with respect to my participation on the panel considering her appeal. To the extent Newman is intending to imply by her allegation that I am in a position to "direct and evaluate Judge David" that I have any control over Judge David's disposition of his cases, the allegation is spurious. To the extent that she

is arguing that I have a special interest in protecting Judge David's reputation as an honest, impartial, competent judge by affirming his orders because we serve on the same task force, I have no more interest in protecting Judge David's judicial reputation than I do any other judge of this state. Parties are certainly entitled to request recusal when they think the facts and circumstances warrant; however, they should be certain that the facts and circumstances justify the request. The only concrete allegation Newman has made is that Judge David and I serve on the same task force and this fails to show even the appearance of impropriety. No reasonable person aware of the circumstances would question my impartiality in this matter, and I therefore decline to recuse myself from these proceedings.